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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,018	09/26/2003	Donald E. Weder	8403.996	7676
30589	7590	03/18/2004		
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			EXAMINER GERRITY, STEPHEN FRANCIS	
			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/672,018

Applicant(s)

WEDER, DONALD E.

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9 26 03</u> . | 6) <input type="checkbox"/> Other: ____  |

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**DETAILED ACTION**

***Information Disclosure Statement***

1. Receipt is acknowledged of an Information Disclosure Statement, filed 26 September 2003, which has been placed of record in the file. An initialed, signed and dated copy of the form PTO-1449 is attached to this Office action.

***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

3. Applicant is respectfully requested to update the status of all pending patent applications.

***Drawings***

4. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

***Claim Objections***

5. Claims 1, 9, 15, 16, 24 and 39 are objected to because of the following informalities:

- a. in claim 1, line 12, the word "contacting" should perhaps be --contracting--;

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- b. in claim 9, line 1, the phrase "disposing the basket into the" should perhaps be --providing a flattened--;
- c. in claim 15, line 1, the phrase "claim 1" should perhaps be --claim 14--;
- d. in claim 16, line 12, the word "contacting" should perhaps be --contracting--;
- e. in claim 24, line 1, the phrase "disposing the basket into the" should perhaps be --providing a flattened--;
- f. in claim 39, line 1, the phrase "disposing the basket into the" should perhaps be --providing a flattened--.

Appropriate correction is required.

#### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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7. Claims 1-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 6,397,650.

The claims of the pending application recite *inter alia* the step of providing a decorative bag having an upper end and a closed lower end, while the claims of the patent recite *inter alia* the step of providing a decorative bag having a first end and a second end. The claims of the application and the claims of the patent are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims of the application to have been obvious variations of the claims of the patents. The claims of the patents and the claims of the present application are both directed to a method of covering a basket, and the recitation that the lower end (which is equivalent to the recitation the second end) is closed is obvious. It is old and well known in the packaging art to have a bag with a closed end to support the material or article within the bag (as evidence by the prior art of record). While the claims of the present application and the claims of the patents may have variations and differences in their scope and terminology, the variations and differences would have been obvious to one having ordinary skill in the art.

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***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 16, 20-28, 31 and 35-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaffer et al. (US 5,551,570).

The Shaffer et al. reference discloses a decorative bag for containing a basket with a handle. The bag is open at an upper end and closed at a lower end. The open upper end of the bag is closed above the level of the handle by the use of a multi-loop bow. As seen in figures 4-6, the bag has a gusset in the closed lower end, and the gusset includes a plurality of folds -- see col. 6, lines 19-36. The gusset in the closed lower end is also considered to meet the language of claim 31, that is, "... bag formed from an excess of material comprising a plurality of folds..." because the claim does not with any specificity define the location of the folds.

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**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited on the attached form (PTO-892) are cited to show a decorative bag and method of bagging. All are cited as being of interest and to show the state of the prior art.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Stephen F. Gerrity** whose telephone number is (703) 308-1279. The examiner can normally be reached on **Monday - Friday** from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Rinaldi Rada**, whose telephone number is (703) 308-2187, may be contacted.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system,

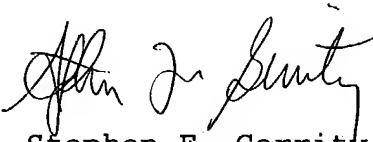
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see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 3700 receptionist whose telephone number is (703) 308-1148.

  
Stephen F. Gerrity  
Primary Examiner  
Art Unit 3721

13 March 2004